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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 DR. ELLIOT MCGUCKEN, an
11 individual,

12 Plaintiff,

13
14 v.

15 JJOK, LLC, a North Carolina Limited
16 Liability Company, d/b/a "Noted News
17 Media, LLC," and "LA Trend;" and Does
1-10, inclusive,

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19 Defendants.
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Case No.:

PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT
3. VIOLATIONS OF THE
DIGITAL MILLENNIUM
COPYRIGHT ACT
(17 U.S.C. §1202)

Jury Trial Demanded

1 Plaintiff, Dr. Elliot McGucken (“McGucken”), by and through his undersigned
2 attorneys, hereby prays to this honorable Court for relief based on the following:

3 **JURISDICTION AND VENUE**

4 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
5 *et seq.*

6 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
7 1338 (a)-(b).

8 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
9 1400(a) in that this is the judicial district in which a substantial part of the acts and
10 omissions giving rise to the claims occurred.

11 **PARTIES**

12 4. Plaintiff McGucken is an individual residing in Los Angeles, California.

13 5. McGucken is informed and believes and thereon alleges that Defendant
14 JJOK, LLC d/b/a “Noted News Media, LLC” and “LA Trend” (“LA Trend”) is a
15 North Carolina limited liability company doing business in and with the state of
16 California, and within this District, and owns the website <https://thelatrend.com/>.

17 6. LA Trend owns two federally registered trademarks with the U.S. Patent
18 and Trademark Office (“USPTO”) for “LA Trend” in connection with the content on
19 its <https://thelatrend.com/> website under Reg. Nos. 6631229 and 6466826.

20 7. On information and belief, McGucken alleges that Defendants DOES 1
21 through 10 (collectively, “DOE Defendants”) (altogether with LA Trend,
22 “Defendants”) are other parties not yet identified who have infringed McGucken’s
23 copyrights, have contributed to the infringement of McGucken’s copyrights, or have
24 engaged in one or more of the wrongful practices alleged herein. The true names,
25 whether corporate, individual or otherwise, of DOE Defendants are presently
26 unknown to McGucken, who therefore sues said DOE Defendants by such fictitious
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1 names, and will seek leave to amend this Complaint to show their true names and
2 capacities when same have been ascertained.

3 8. On information and belief, McGucken alleges that at all times relevant
4 hereto each of the Defendants was the agent, affiliate, officer, director, manager,
5 principal, alter-ego, and/or employee of the remaining Defendants and was at all
6 times acting within the scope of such agency, affiliation, alter-ego relationship and/or
7 employment; and actively participated in or subsequently ratified and adopted, or
8 both, each and all of the acts or conduct alleged, with full knowledge of all the facts
9 and circumstances, including, but not limited to, full knowledge of each and every
10 violation of McGucken's rights and the damages to McGucken proximately caused
11 thereby.

12 **CLAIMS RELATED TO MCGUCKEN'S PHOTOGRAPHS**

13 9. McGucken is an acclaimed photographer who created and owns the
14 original photographs depicted in **Exhibit A** attached hereto ("Subject Photographs.")

15 10. McGucken has registered the Subject Photographs and was granted U.S.
16 copyright registrations therefor.

17 11. Prior to the acts complained of herein, McGucken published and widely
18 publicly displayed the Subject Photographs.

19 12. Following McGucken dissemination and display of the Subject
20 Photographs, Defendants, and each of them copied, reproduced, displayed,
21 distributed, created derivative works, and/or otherwise used the Subject Photographs
22 without license, authorization, or consent, including by using the Subject
23 Photographs on their website ("Infringing Use") which was created, published, and
24 distributed by LA Trend. The Infringing Use was made widely and publicly available
25 at *thelatrend.com*, which is owned and operated by Noted News Media, LLC. True
26 and correct screen captures of the Infringing Use, and its accompanying URL, are
27 included in **Exhibit B** attached hereto.

1 19. On information and belief, McGucken alleges that Defendants, and each
2 of them, infringed McGucken's copyrights by creating infringing derivative works
3 from the Subject Photographs and publishing same to the public.

4 20. Due to Defendants', and each of their, acts of infringement, McGucken
5 has suffered general and special damages in an amount to be established at trial.

6 21. Due to Defendants', and each of their, acts of copyright infringement as
7 alleged herein, Defendants, and each of them, have obtained direct and indirect
8 profits they would not otherwise have realized but for their infringement of
9 McGucken's rights in the Subject Photographs. As such, McGucken is entitled to
10 disgorgement of Defendants' profits directly and indirectly attributable to
11 Defendants' infringement of McGucken's rights in the Subject Photographs in an
12 amount to be established at trial.

13 22. On information and belief, McGucken alleges that Defendants, and each
14 of them, have committed acts of copyright infringement, as alleged above, which
15 were willful, intentional and malicious, which further subjects Defendants, and each
16 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright
17 Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from
18 asserting certain equitable and other defenses.

19 **SECOND CLAIM FOR RELIEF**

20 **(For Vicarious and/or Contributory Copyright Infringement – Against all**
21 **Defendants, and Each)**

22 23. McGucken repeats, re-alleges, and incorporates herein by reference as
23 though fully set forth, the allegations contained in the preceding paragraphs of this
24 Complaint.

25 24. On information and belief, McGucken alleges that Defendants knowingly
26 induced, participated in, aided and abetted in and profited from the illegal
27 reproduction and distribution of the Subject Photographs as alleged hereinabove.

1 Such conduct included, without limitation, publishing photographs obtained from
2 third parties that Defendants knew, or should have known, were not authorized to be
3 published by Defendants.

4 25. On information and belief, McGucken alleges that Defendants, and each
5 of them, are vicariously liable for the infringement alleged herein because they had
6 the right and ability to supervise the infringing conduct and because they had a direct
7 financial interest in the infringing conduct. Specifically, Defendants, and each of
8 them, profited in connection with the Infringing Use, and were able to supervise the
9 distribution, broadcast, and publication of the Infringing Use.

10 26. By reason of the Defendants', and each of their, acts of contributory and
11 vicarious infringement as alleged above, McGucken has suffered general and special
12 damages in an amount to be established at trial.

13 27. Due to Defendants' acts of copyright infringement as alleged herein,
14 Defendants, and each of them, have obtained direct and indirect profits they would
15 not otherwise have realized but for their infringement of McGucken's rights in the
16 Subject Photographs. As such, McGucken is entitled to disgorgement of Defendants'
17 profits directly and indirectly attributable to Defendants' infringement of
18 McGucken's rights in the Subject Photographs, in an amount to be established at
19 trial.

20 28. On information and belief, McGucken alleges that Defendants, and each
21 of them, have committed acts of copyright infringement, as alleged above, which
22 were willful, intentional and malicious, which further subjects Defendants, and each
23 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright
24 Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from
25 asserting certain equitable and other defenses.

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27 //

THIRD CLAIM FOR RELIEF

**(For Violations of the Digital Millennium Copyright Act (17 U.S.C. §1202 –
Against all Defendants, and Each)**

29. McGucken repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

30. McGucken regularly published the Subject Photographs with copyright management information (“CMI”), as that phrase is used in 17 USC § 1202. McGucken’s CMI included, without limitation, his name, company name, copyright notice, metadata, and other identifying information. The CMI was prominently displayed and would be viewed by visitors to McGucken’s website and online profiles.

31. On information and belief, McGucken alleges that Defendants, and each of them, intentionally removed and altered McGucken’s violated 17 U.S.C. §1202(b) before copying, reproducing, distributing, and displaying the Subject Photographs.

32. On information and belief, McGucken alleges that Defendants, and each of them, did distribute or import for distribution copyright management information knowing that the CMI has been removed or altered without authority of McGucken or the law.

33. On information and belief, McGucken alleges that Defendants, and each of them, did distribute and publicly display works and copies of works knowing that copyright management information has been removed or altered without authority of McGucken or the law, knowing, or, with respect to civil remedies under 17 USC § 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

34. On information and belief, McGucken alleges that Defendants, and each of them, in violation of 17 § USC 1202(a), knowingly and with the intent to induce,

1 enable, facilitate, or conceal infringement provided false copyright management
 2 information when they added their own logos, names, bylines, and attribution to the
 3 Subject Photographs.

4 35. On information and belief, McGucken alleges that Defendants, and each
 5 of them knew, that they were providing false copyright management information to
 6 its copies of the Subject Photographs and distributing copyright management
 7 information that was false at the time it distributed its unauthorized copies of the
 8 Subject Photographs.

9 36. The above conduct is in violation of the Digital Millennium Copyright
 10 Act and exposes Defendants, and each of them, to additional and enhanced common
 11 law and statutory damages, attorneys' fees, and penalties pursuant to 17 USC § 1203
 12 and other applicable law.

13 37. On information and belief, McGucken alleges that Defendants, and each
 14 of their, conduct as alleged herein was willful, reckless, and/or with knowledge, and
 15 McGucken resultantly seeks enhanced damage and penalties.

16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiff prays for judgment as follows:

18 **Against all Defendants, and Each with Respect to Each Claim for Relief:**

- 19 a. That Defendants, and each of them, as well as their employees, agents,
 20 or anyone acting in concert with them, be enjoined from infringing
 21 McGucken's copyrights in the Subject Photographs, including without
 22 limitation an order requiring Defendants, and each of them, to remove
 23 any content incorporating, in whole or in part, the Subject Photographs
 24 from any print, web, or other publication owned, operated, or controlled
 25 by any Defendant.
- 26 b. That McGucken be awarded all profits of Defendants, and each of them,
 27 plus all losses of McGucken, plus any other monetary advantage gained
 28

by the Defendants, and each of them, through their infringement, the exact sum to be proven at the time of trial, and, to the extent available, statutory damages as available under the 17 U.S.C. § 504, 17 U.S.C. §1203, and other applicable law.

- c. That a constructive trust be entered over any revenues or other proceeds realized by Defendants, and each of them, through their infringement of McGucken's intellectual property rights;
- d. That McGucken be awarded his attorneys' fees as available under the Copyright Act U.S.C. § 505 et seq.;
- e. That McGucken be awarded his costs and fees under the above statutes;
- f. That McGucken be awarded statutory and enhanced damages under the statutes set forth above;
- g. That McGucken be awarded pre-judgment interest as allowed by law;
- h. That McGucken be awarded the costs of this action; and
- i. That McGucken be awarded such further legal and equitable relief as the Court deems proper.

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Respectfully submitted,

Dated: August 26, 2022

DONIGER / BURROUGHS

By: /s/ Scott Alan Burroughs
 Scott Alan Burroughs, Esq.
 Trevor W. Barrett, Esq.
 Frank R. Trechsel, Esq.
Attorneys for Plaintiff

Exhibit A

Subject Photographs

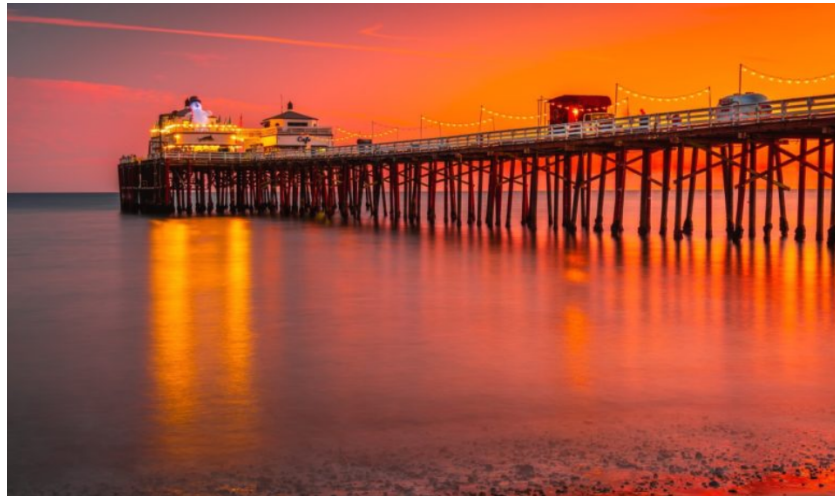
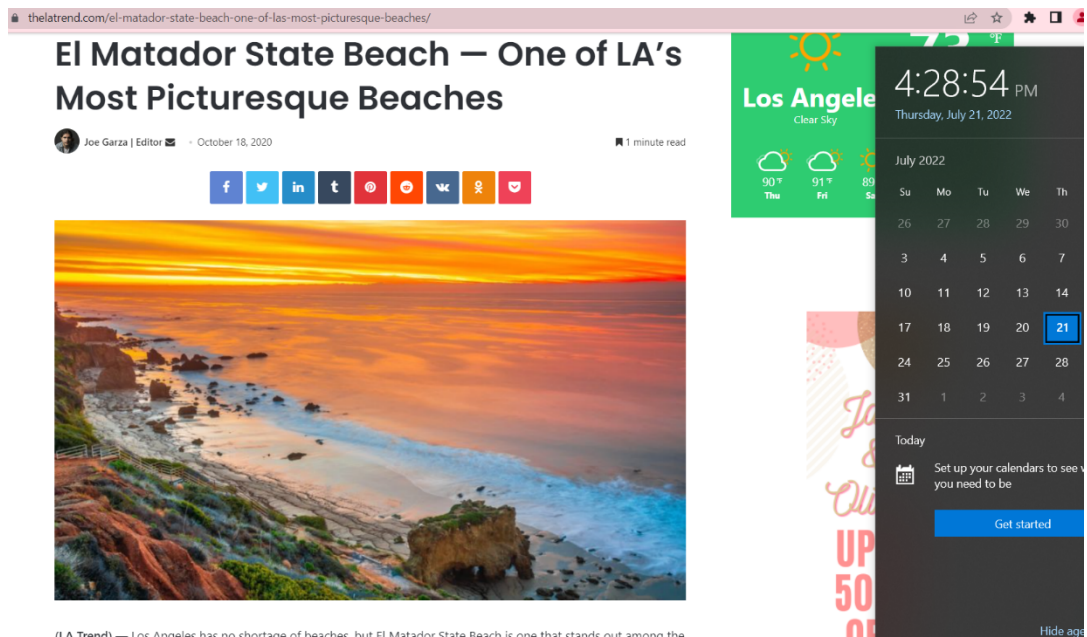


Exhibit B**Infringing Use****Infringing Use URL:**

<https://thelatlend.com/el-matador-state-beach-one-of-las-most-picturesque-beaches/>




<https://thelattrend.com/malibu-pier-shopping-eating-fishing/>

thelattrend.com/malibu-pier-shopping-eating-fishing/

Malibu Pier: Shopping & Eating & Fishing, Oh My!

Joe Garza | Editor November 18, 2020 1 minute read

f t in t p v s



Los Angeles
Clear Sky
93°
54°
10.1

90° Thu	89° Fri	88° Sat	87° Sun
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